



**DEPARTMENT OF THE TREASURY**

INTERNAL REVENUE SERVICE

1100 Commerce  
Dallas, Texas 75242

MAY 1 2007

Release Number: **201321039**

Release Date: 5/24/2013

Person to Contact:

Identification Number:

Contact Telephone Number:

ORG  
ADDRESS

Legend:

ORG = Name of Organization

DATE= xx

Address = Address of ORG

UIL:501.04-00

Dear :

This is a Final Adverse Determination as to your exempt status under section 501(c) (4) of the Internal Revenue Code.

Our adverse determination was made for the following reasons: Organization's facilities and common areas maintained by the association are not open to the general public, but rather restricted to or primarily for the benefit of its members.

The ORG. fails to meet the requirement for exemption under IRC 501(c) (4) and 528. Section 1.501(c)(4)-1 of the Income Tax Regulations which states an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community

As a result of a recent audit of your organization's activities and Form 990 for the period ended December 31, 20xx, the operation is organized and operating solely as a homeowner's association for the mutual benefit of its members which do not qualify for exempt status under IRC section 501(c)(4).

Based on the above, we are revoking your organization's exemption from Federal income tax under section 501(c) (4) of the Internal Revenue Code effective January 1, 20xx.

You are required to file Federal income tax returns on Form 1120-H. These returns should be filed with the appropriate Service Center for all years beginning after December 31, 20xx. You have executed the Form 6018 agreeing to this revocation.

You are required to file Form 1120-H, U.S. Corporation Income Tax Return. Form 1120-H must be filed by the 15<sup>th</sup> day of the third month after the end of your annual accounting period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. However, the maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

You have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by writing to:

Internal Revenue Service

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,  
Marsha A. Ramirez  
Director, EO Examinations



**DEPARTMENT OF THE TREASURY**  
Internal Revenue Service

March 9, 2009

**LEGEND:**

ORG = Name of ORG  
Address = Address of ORG  
Date = Date of ORG

ORG  
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:  
December 31, 20xx

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

**CERTIFIED MAIL — RETURN RECEIPT REQUESTED**

Dear

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service  
Taxpayer Advocate

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 6018-4\  
Report of Examination  
Envelope

Form 886A	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit #1
Name of Taxpayer ORG		Year/Period Ended 20xx12

**LEGEND:**

**ORG = Name of Organization**

**State – Name of State**

**Date = xx**

**Issue:** Whether the ORG qualifies for exemption under Section 501(c)(4) of the Internal Revenue Code of 1986.

**Facts:** The ORG was incorporated in the State on January 2, 19xx. The Articles of Incorporation include the development's rules regarding what owners can or cannot do while living there. Community rules include animal restrictions, insurance coverage, and utility information. The community is comprised of 213 homes. All owners are required to be members of the association and pay monthly dues of \$.

As stated in the declaration of covenants, conditions and restrictions the organization has the power, duty and responsibility of maintaining and administering the common properties, and collecting and disbursing the assessments and charges. The association also has the right to administer and enforce the covenants and restrictions. The common properties shall mean and refer to those areas devoted to the common use and enjoyment of the owners, and include the following: those certain landscaping improvements, plantings, screening walls, fencing, sprinlder systems and recreational facilities, to be placed as shown on the plat for each phase.

The association provides maintenance and improvements to the common areas in the development including the swimming pool, security lights, trees, and roads. The association is responsible for maintaining the common areas to ensure compliance with the City ordinances. Residents are responsible for the upkeep of the exterior of their homes.

The swimming pool and common areas are not open to the general public. The association conducts meetings to discuss the safety and repairs of the common areas. The association publishes a newsletter to inform members of upcoming or proposed maintenance projects and to address any concerns voiced by residents. The newsletters are distributed to the members.

Most of the association's receipts have been from membership dues, transfer fees and interest.

**Law:** Section 501(c)(4) of the Internal Revenue Code of 1986 provides for exemption from Federal income tax of civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in

Form 886A	Department of the Treasury- Internal Revenue Service	Schedule No. or Exhibit #1
Name of Taxpayer	<b>Explanation of Items</b>  ORG	Year/Period Ended 20xx12

promoting in some way the common good and general 'welfare of the community, i.e., for the purposes of bringing about civic betterment and social improvements.

In Revenue Ruling 74-17, 1974-1 CB 130, (Jan. 01, 1974), the Service held that a organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

In Revenue Ruling 74-99, 1974-1 CB 131, (Jan. 01, 1974), the Service held that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

In *Commissioner v. Lake Forest, Inc.*, 305 F. 2d 814 (1962), it was held that a corporation that provided housing on a cooperative basis lacked the necessary requirements of an organization described in section 501(c)(4) of the Code. The court held the operation to be a private self-help enterprise with only an incidental benefit to the community as a whole.

The court also held that the organization is operated primarily for the private benefit of members and any benefits to the community are not sufficient to meet the requirement of the regulation that the organization be operated primarily for the common good and general welfare of the people of the community.

**Government's Position:** Based on the applicable law and facts the ORG is not operating primarily for social welfare within the meaning of § IRC 501(c)(4), if it restricts access by the general public to its "common" areas such as recreational facilities, streets, sidewalks and green areas. The homeowner's association is operating primarily for the mutual benefit of its members.

**Taxpayer's Position:** ORG agrees to the revocation of its exempt status from as organization described in Section 501(c)(4). The proposed effective date of the revocation is January 1, 20xx.

**Conclusion:** Although ORG was granted exemption as an organization described in the Internal Revenue Code Section 501(c)(4), it is obvious that the facilities and common areas maintained by the association are not open to the general public, but rather restricted to or primarily for the benefit of its members. This organization does not qualify for exemption under Section 501(c)(4) of the Internal

Form <b>886A</b>	Department of the Treasury- Internal Revenue Service	Schedule No. or Exhibit # 1
<b>Explanation of Items</b>		
Name of Taxpayer	ORG	Year/Period Ended 20xx12

Revenue Code of 1986 because it is not promoting social welfare within the meaning of the IRC & Regulations. Since you will no longer be an exempt organization, you will be required to file Federal income tax returns on Form 1120-H, *U S Income Tax Return for Homeowners Associations*. Forms 1120-H should be filed for years ended December 31, 20xx and subsequent years.